

REMARKS/ARGUMENTS

Telephone Interview

Applicants thank the Examiner Rodney P. Swartz, Ph.D. for the telephone interview on September 16, 2009 to discuss the objection to claim 1 and the rejection of claim 5 as being indefinite.

Claim Status

Independent claim 1 has been amended to recited the phrase “and the size of”. Claim 5 has been cancelled. Applicants submit that the foregoing amendments place the application in immediate condition for allowance. As such, Applicants earnestly request that the Office enter the foregoing claim amendments, withdraw all rejections, and issue a formal notification of the allowability of all claims as now presented. Claims 1-4 and 8-16 are currently pending.

Claim 5

The Office has maintained the rejection of claim 5 under 35 U.S.C. §112, second paragraph, as being indefinite. More specifically, the Office argues that it is unclear “how one identifies the particular mycobacterial species as there is no step that indicates how one distinguishes which species is present.” See page 3 of the Office Action. The Office also argues that claim 5 is indefinite because it is unclear as to how much of the amplified hsp 65 gene fragment is actually sequenced in step (2) (e.g., a portion or the entire amplified gene fragment).

Only for purposes of expediting the prosecution of this case, claim 5 has been cancelled. Thus, Applicants request the withdrawal of this rejection.

Claims 1 and 8-15

The Office has objected to independent claim 1 for not including the word “and” prior to the phrase “the size of”. Additionally, the Office has rejected claims 8-15 under 35 U.S.C. §112, second paragraph, as being indefinite because each of these claims depend from objected claim 1.

Application No.: 10/500,586
Amendment Dated September 23, 2009
Reply to Office Action of June 23, 2009

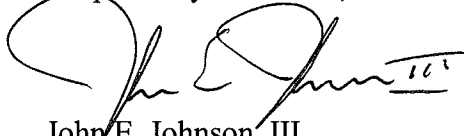
Independent claim 1 has been amended by adding the word "and" prior to the phrase "the size of". Applicants submit that this amendment overcomes the objection to claim 1 and also the rejection of claims 8-15 as being indefinite. Thus, Applicants request the withdrawal of the objection to claim 1 and the rejection of claims 8-15 as being indefinite.

Conclusion

In view of the remarks made above, Applicants submit that the pending claims are now in condition for allowance. Applicants respectfully request that the claims be allowed to issue. If the Examiner wishes to discuss the application or the comments herein, the Examiner is urged to contact the undersigned by telephone.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Johnson, III", with a stylized flourish at the end.

John E. Johnson, III
Registration No. 58,367

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL02/31483668v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON SEPTEMBER 23, 2009.